IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIRST DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 24531 of 2004

Between:

G. Murali, S/o Late Suryanarayana,
R/o Plot No. 9, H.No. 6/70, Indiranagar Colony, Srikakulam.

..... PETITIONER

AND

1 Andhra Pradesh State Road Transport Corporation,
Musheerabad, Hyderabad,
Rep. by its Vice Chairman & Managing Director,
Hyderabad.
2 The Regional Manager, APSRTC, Srikakulam.
3 The Depot Manager, APSRTC, Srikakulam -1 Depot,
Srikakulam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order direction or writ particularly one in the nature of writ Mandamus or any other appropriate writ (i) declaring the proceedings P1/469(5)/2004, SKLM-I dated 18-6-2004 declaring the petitioner unfit for the post of A-1 Category Driver and also placing the petitioner under forced leave with effect from 17-5-2004 is illegal and arbitrary including the proceedings dated 30-7-2004 and 22--9-2004; (ii) declare the action of the respondent in dispensing with the services of the petitioner without following the Section 47 of Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995; and (iii) consequently direct the respondents to provide alternate employment to continue the petitioner in service in the same scale of pay with all service benefits and pass such other order or orders

Counsel for the Petitioner: MR.G.VIDYASAGAR

Counsel for the Respondents: KUM.B.G.UMA DEVI FOR RVAK.

The Court, at the admission stage, made the following :

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO: 24531of 2004

ORDER:

The present writ petition has been filed to declare the proceedings No.P1/469 (5)/2004.SKLM-I, dated 18-06-2004, issued by the 3rd respondent-Depot Manager, AP State Road Transport Corporation, Srikakumam-1, Srikakulam, in placing the petitioner under 'forced leave' with effect from 17-05-2004 as illegal and arbitrary.

2. The petitioner was appointed as a driver in Srikakulam-I Depot in the year 1983. On 06-03-2004, the petitioner met with an accident at Illicipuram Junction. Thereupon, the 3rd respondent addressed a letter dated 23-04-2004 to the Executive Director (Medical) of the respondent- Corporation, requesting to conduct medical examination. Thereafter, the petitioner was subjected to medical examination. The Medical Officer after conducting examination, found

the petitioner to be unfit for the A-1 category due to partial colour blindness. Then, the 3rd respondent issued proceedings dated 18-06-2004 stating that the petitioner was found to be unfit for A-1 category and hence, he was placed under “forced leave” with effect from 17-05-2004. Thereupon, he made a representation to the 3rd respondent on 19-06-2004 requesting for re-medical examination. Even after re-examination, he was found unfit for the post of A-1 category. He filed a review petition, thereafter; he was referred to Medical Board. The Medical Board also declared him unfit. Then, the petitioner made a representation on 04-10-2004, requesting them to provide employment as per Disability Act. But no action has been taken.

3. The respondents filed detailed counter affidavit admitting the appointment and also about the accident of the petitioner. It is further stated that the Joint Accident Enquiry Committee came to the conclusion that major part of the responsibility lies with the cyclist, when the cyclist tried to overtake the bus from left side, but there is some contribution on the part of the petitioner in not taking preventive steps to avert the accident, the accident was happened at the backside of the bus and as seen from the accident photoes, the rear tyre of the bus was not run over the body of the cyclist. The driver was not fully aware of the accident. Therefore, the committee felt that the driver was not responsible for the said accident. Thereafter, the committee directed the petitioner for medical examination. The Doctors after examination, found the petitioner unfit for A-1 category due to partial colour blindness. Therefore, he was kept under ‘forced leave’ from the date of found unfit. The petitioner submitted a representation to the 2nd respondent-Regional Manager on 04-10-2004 for providing alternative appointment. The 3rd respondent has informed the petitioner that his name was registered in the office for alternative appointment of Shramik under 10% quota as per the circular instructions and his case will be considered as and when his turn comes. There are no sanctioned vacancies of Shramiks in Srikakulam Region under 10% quota as he was not eligible for Conductor post. In case of retirement on medical grounds, the employee will be extended all terminal benefits and therefore, the respondents pray to dismiss the writ petition.

4. The factual matrix is not seriously disputed. The senior Medical

Officer examined the petitioner and issued a Certificate stating that the petitioner was found to be unfit for the category A-1 due to partial colour blindness. So, also on re-examination, the Medical Board also found that he was unfit due to partial colour blindness as a result, the petitioner was forced to go on leave for a period of one year. Whereupon, the petitioner made a representation to provide alternative employment and his name was included in the Shramiks in Srikakulam Region as per the Circular instructions for alternative appointment.

5. The learned counsel for the petitioner contended that under Section 47 (1) of the Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995 (for brevity 'the Act, 1995'), the petitioner has to be kept on a supernumerary post until a suitable post is available.

6. On the other hand, the learned standing counsel for the respondent-Corporation contended that the respondents are ready to provide alternative appointment to the petitioner as a Shramik under 10% quota as per the Circular instructions and as a matter of fact, the name of the petitioner was registered in the Srikakulam Region as and when his turn comes, he will be given alternative appointment.

7. Under Section 47 (1) of the Act, 1995, no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service. Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits. Provided further that if it is possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

8. In this case, due to colour blindness, the petitioner was unfit for A-1 category. As per proviso to Section 45 of the Act, 1995, the respondent-Corporation cannot dispense with the service of the petitioner or refuse to provide alternative employment. Therefore, it is obligated on the part of the respondent-Corporation to provide alternative suitable post to the petitioner. In similar circumstances, this Court in W.P.No.2077 of 2002, dated 25-02-2003 in between **A.P.Lingam v. AP State Road Transport Corporation,** directed the

respondent-Corporation to provide suitable alternate post to the petitioner when he is not eligible to hold the post of Conductor, as he had passed merely first class. Therefore, the respondent-Corporation is under obligation to provide alternate post to the petitioner, even if suitable post is not there, suitable post is to be created.

9. On taking this aspect of the matter as a guideline, I consider it appropriate to dispose of the writ petition with a direction.

10. Accordingly, the writ petition is disposed of, directing the respondent-Corporation to provide alternate post to the petitioner for which he is suitable. It is made clear that the petitioner is entitled to all usual mandatory benefits with effect from the date of found unfit to the post of A-1 category till the date of his joining in the alternative post or his retirement whichever is earlier. The said exercise shall be done within eight weeks' time from the date of receipt of a copy of this order. No costs.

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March 21, 2005

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To

1 The Vice Chairman & Managing Director, Andhra Pradesh State Road Transport Corporation,
Musheerabad, Hyderabad,
2 The Regional Manager, APSRTC, Srikakulam.
3 The Depot Manager, APSRTC, Srikakulam -1 Depot, Srikakulam.

4 Two C.Ds